

Exhibit G

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 JANE DOES NOS. 1-46,

4 Plaintiffs,

5 v.

20 Cv. 1288 (ER)

6 PETER J. NYGARD, et al.,

7 Defendants.

8 -----x

9 June 3, 2020

2:00 p.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13 APPEARANCES

14 DiCELLO LEVITT GUTZLER LLC
15 Attorneys for Plaintiffs

16 BY: GREG G. GUTZLER
JUSTIN HAWAL

-and-

17 THE HABA LAW FIRM, P.A.
18 BY: LISA D. HABA

19 MORVILLO, ABRAMOWITZ, GRAND, IASON & ANELLO P.C.
Attorneys for Defendants

20 BY: ELKAN ABRAMOWITZ
21 CHRISTOPHER B. HARWOOD
EDWARD M. SPIRO
BRENT M. TUNIS

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(The Court and all parties appearing telephonically)

(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record, starting with counsel for plaintiff.

MR. GUTZLER: Good afternoon, Judge Ramos and counsel. This is Greg Gutzler, from DiCello Levitt Gutzler, on behalf of plaintiffs. I am joined by my colleagues, Justin Hawal of DiCello Levitt Gutzler, and Lisa Haba of The Haba Law Firm.

THE COURT: Good afternoon.

MR. ABRAMOWITZ: Good afternoon, your Honor. Elkan Abramowitz, along with Edward Spiro and Christopher Harwood and Brent Tunis, for Mr. Nygard.

THE COURT: Good afternoon to you all.

This matter is on for a premotion conference at the request of plaintiffs. I just want to note at the outset that this matter is being conducted telephonically and remotely and we are being assisted by a court reporter. So when you speak, please state your name and please speak slowly and clearly so the court reporter can take everything down accurately.

Mr.Gutzler, weren't we just here?

MR. GUTZLER: Yes, your Honor, we were here. We have new events that have come to our attention that requires the Court's attention. So thank, your Honor, for the time.

THE COURT: What is it that you want to do? What is new?

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1 MR. GUTZLER: So, your Honor, there is a brief factual
2 backdrop, if I may provide it for you, to explain why we are
3 here with respect to evidence destruction as well as leave to
4 file a second amended complaint. I would like to deal with the
5 evidence destruction first, if I may, your Honor.

6 THE COURT: Certainly.

7 MR. GUTZLER: So, your Honor, the brief factual
8 backdrop is that after the filing of this lawsuit, hundreds of
9 witnesses have voluntarily come forward to us, plaintiffs'
10 counsel, with information, and they have expressed how grateful
11 they are that the truth is being revealed, and they provided a
12 lot of very helpful information as to where to find evidence
13 and what is going on.

14 THE COURT: I'm sorry, Mr. Gutzler. Did you say
15 hundreds of witnesses?

16 MR. GUTZLER: Yes. Including, by the way, your Honor,
17 victim survivors, and that is why we seek a second amended
18 complaint, but I will get to that.

19 Your Honor, in the course of those conversations with
20 hundreds of witnesses that have voluntarily come forward, we
21 have learned a lot about Nygard's operations and conduct with
22 its global headquarters right here in Times Square, Judge. We
23 also learned about efforts to silence and intimidate witnesses,
24 the use of company resources for facilitating the sex
25 trafficking ring, including paying victims in company cash and

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1 paying as company employees dozens of sex trafficking
2 recruiters and other personnel involved in the operation.

3 With respect to evidence, precisely on point here,
4 after we filed this lawsuit, several people independently
5 called me personally to say that they have heard that Nygard IT
6 employees were being instructed to do a couple of different
7 things. One, your Honor, was to, quote, clean up the Nygard
8 corporate website and other Internet locations that contained
9 photos and videos of Nygard and various women. The second
10 thing that these victims came forward to tell us is that Nygard
11 IT personnel were being asked to try to clean up the results of
12 Google searches so certain content in URLs no longer showed up
13 in Google's indexing. These, quote, as they said to me,
14 clean-up efforts were corroborated when we determined that many
15 links that we actually cited to in our February 13 complaint
16 suddenly no longer worked just days later. Defendants will
17 only now admit this cleanup did in fact occur, but the fact is
18 we were right about that information.

19 That brings us to the next salient issue that came up
20 since we were last together. Just as we heard about the
21 clean-up efforts, which were proven to be true, we also heard
22 from additional witnesses who called us to offer help and
23 information. They were informed that there were instructions
24 to IT employees to destroy other documents and files. Of
25 course, your Honor, we weren't privy to exactly what because we

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1 don't have that information. So, your Honor, that is what
2 brings us here today.

3 Obviously, we don't have any way of knowing what is
4 happening inside Nygard's corporate circle, particularly now
5 that the lawsuit has been filed and the FBI has an active sex
6 trafficking investigation with Nygard and his companies, but
7 what we can do is listen to information brought to us and try
8 to connect the dots. And the very best thing that we can do is
9 to alert Nygard's counsel so they can fulfill their obligations
10 to ensure evidence is not destroyed. And, your Honor, we did
11 that here, but to no avail.

12 Because of the critical importance of this case, and
13 the evidence that resides on the corporate computers and files,
14 I wrote a letter to Nygard's counsel on the phone today on
15 February 25. Your Honor, that was two weeks after we filed
16 this lawsuit. In that letter, February 25, I passed along the
17 best information that I had and provided that to counsel
18 promptly after hearing the information from multiple
19 independent sources. The goal, your Honor, was simple but
20 critically important, to seek the cooperation of counsel to
21 ensure that evidence isn't destroyed. We did not hide the
22 information in some type of effort to later trap defendants in
23 our spoliation claim. We tried from the outset to avoid the
24 destruction that did occur. We don't want to be in a position
25 now to try to recover tens of thousands of files that were

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1 deleted. Your Honor, we want the evidence, we want it
2 preserved, and we are entitled to it.

3 THE COURT: Is that evidence in the possession of
4 Mr. Richter or the Richter Group?

5 MR. GUTZLER: So the answer to that, your Honor, is
6 not prior to the destruction. The answer to your question is
7 now it is, it wasn't before.

8 THE COURT: So why are you coming to me?

9 MR. GUTZLER: Because, your Honor, evidence was
10 destroyed before Richter took over by the Nygard corporate
11 defendants.

12 THE COURT: Can I just stop you again, Mr. Gutzler,
13 because I started by asking you what is new and you told me
14 what is new is we learned about all of this destruction. I am
15 reading from your letter, and in your letter on page 2 at the
16 very top line you write, "On March 11, 2020, the Winnipeg Free
17 Press published an article stating that defendants did not take
18 appropriate measures, but rather, only issued a litigation hold
19 on February 26." Then in the next paragraph you write, On
20 April 27, 2020, Richter authored its supplementary first
21 report, in which it found that in excess of 10,000 files were
22 deleted.

23 So let me go back to my first question. What is new?

24 MR. GUTZLER: I became aware of that Richter report.
25 Counsel did not inform me that evidence had been destroyed. I

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1 literally happened upon the Richter report, and I read through
2 the entire thing, and only then did I discover, your Honor,
3 after our last hearing, that evidence had been destroyed, after
4 I had put opposing counsel on notice, and I was never informed
5 of that by counsel. So we had to bring it to your Honor's
6 attention.

7 THE COURT: Can I back you up again. You said you
8 came across the Richter report. How did that happen?

9 MR. GUTZLER: So, your Honor, the Richter report, the
10 way it works in the Canadian receivership, apparently, is they
11 actually have a website that will occasionally publish reports
12 that the Canadian receiver puts out, and I just was doing some
13 homework and I happened to stumble upon it.

14 THE COURT: So that report was not kept from you.

15 MR. GUTZLER: It wasn't kept from me, but it also
16 wasn't given to me, and opposing counsel certainly knew about
17 the evidence being destroyed after I asked about it and I was
18 not informed. So it wasn't kept from me, in terms of the
19 report by Richter was publicly available, but I did not know
20 about the supplemental report on April 27, I just happened upon
21 it.

22 THE COURT: OK.

23 MR. GUTZLER: I appreciate the question, your Honor,
24 and I understand what you are asking me.

25 So, your Honor, when I did raise the issue on February

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1 25, we wanted counsel to put measures in place. In response, I
2 asked five times -- again, your Honor, this is February 25 -- I
3 asked, I counted five times to counsel, was a litigation hold
4 issued, and if so, when was it issued? Counsel refused to
5 answer each of those five times. We now know why. Because the
6 litigation hold was not issued until the day after my letter
7 and I raised the issue with them.

8 THE COURT: The litigation hold was issued the day
9 after you sent them a letter asking them to put up a litigation
10 hold?

11 MR. GUTZLER: Yes. Two weeks after our lawsuit was
12 filed. But there is more to it, your Honor, and I think it's
13 very, very pertinent here.

14 So what happened was that as we were moving forward,
15 we looked at what the defendants were saying and when they had
16 a duty to preserve evidence. Your Honor, the duty to preserve
17 evidence in this case began no later than February of 2019.
18 And I want to be clear, 2019, and I will explain why, your
19 Honor.

20 The law is undisputed. It is incumbent upon counsel
21 to ensure document retention when a party reasonably
22 anticipates litigation. We all know that black-letter law is
23 very, very clear. In this case, your Honor, defendants said in
24 February of 2020 -- we are moving ahead a year -- that when we
25 filed this case, February 13th of 2020, Nygard defendants

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1 stated publicly, quote, this lawsuit was expected. It is
2 exactly what Peter Nygard predicted would happen when he filed
3 his RICO lawsuit in New York last year. Your Honor, that was
4 filed in February of 2019.

5 So Nygard individually and the corporate defendants
6 knew it was coming as early as February of '19. Therefore, the
7 litigation hold should have issued then, and certainly no later
8 than February of 2020 when we filed the lawsuit. It wasn't
9 done. So we are concerned that the litigation hold was not
10 issued until more than a year after it should have been issued,
11 and therefore, your Honor, we do not know critically what
12 documents were destroyed during that one-year period.

13 But that brings us to an even more troubling issue,
14 your Honor. That is, after the litigation hold was issued,
15 pursuant to our letters and imploring counsel to do so, there
16 was a litigation hold on February 26. But what we found out
17 later, again, your Honor, when I happened upon the Richter
18 report, is that over 10,000 documents were destroyed by a key
19 executive, and one of the people we named as a key
20 co-conspirator in the ring, in March. And we had no way of
21 knowing that until we read the Richter report. There has never
22 been an explanation, one, as to why the litigation hold was not
23 issued until two weeks after we filed the lawsuit, after the
24 FBI raid, and after the DOJ grand jury subpoena to Nygard. We
25 also don't have any explanation why it wasn't issued in

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February of 2019 when they reasonably anticipated litigation.

Now, moving on to the document destruction after the litigation hold. Your Honor, you asked a very good question. That was done by a key executive, Greg Fenske, on the very day that Richter was going to take over the computers. So it was his last chance to delete documents. And according to the Richter report, that's what he did.

Your Honor, there were actually three users that deleted over 10,000 documents. Greg Fenske was one of the users and he deleted over 1,000. We do not know what happened with the other 9,000 documents. We don't know what else may have been destroyed. We don't know the other two users.

Your Honor, opposing counsel sent along a deletion log as a later submission, and I would submit to you that that deletion log raises more issues. Very briefly, I am putting on my reading glasses to note a few entries. Bates number NYINC-00713. Your Honor, I don't know what those Bates numbers are. Perhaps it's from the FBI. I don't know where these Bates numbers came from. Ironically, on page 1 of the Fenske deletion log, one of the documents deleted was in fact the litigation hold itself. Also, on Bates page 715, deleted was a file called "Nygard agreement banking details." On that same page, there were about six entries near the bottom where there are a series of wires in 2018 where it says "Re Peter Nygard direction to pay." We would certainly be interested in those

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documents, your Honor.

THE COURT: Can you repeat that last part?

MR. GUTZLER: Yes, your Honor. There were a series of entries here, on Bates page 715, from the Greg Fenske deletion log, that indicate he deleted messages, files, that talk about "Peter Nygard direction to pay." There are about six of those entries as well as a wire by Peter Nygard for \$10 million in August of 2018.

I am just saying, your Honor, these seem like pretty relevant documents, or at least interesting documents. But the most interesting deletions by Mr. Fenske are on page 716. And remember that the Nygard defendants said they predicted this lawsuit as early as February of 2019. The entries that show it was deleted right before Richter took over the computers, after the litigation hold, are a series of entries on Bates page 716. Very curious, your Honor, where a period here of three months, September of 2019 to December of 2019, again, after he predicted the sex trafficking lawsuit and after he knew The New York Times was doing a story on the sex trafficking, there are a series of cash drawdowns in U.S. currency in that three-month period by Nygard of over \$28 million. I would certainly be curious why \$28 million in a three-month period was being drawn down in U.S. currency after he predicted this lawsuit.

Finally, your Honor, on Bates page 721, there is an entry here that shows it was again deleted. It is entitled,

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1 "Report. Photos, June 18 through June 28, 2018, Falcon Lake."
2 Falcon Lake is where Peter Nygard has pamper parties and other
3 parties in Winnipeg. So photos were deleted of a Nygard
4 residence.

5 Then finally, on Bates page 724, there are about 30
6 entries of Excel spreadsheets, all of which were deleted by
7 Mr. Fenske after the litigation hold.

8 So, your Honor, given that we have seen the deletion
9 log only of Mr. Fenske, which covers 1,000 documents, it is
10 very troubling to think what the other 9,000 documents were
11 that we know were destroyed according to Richter. And also,
12 according to Richter, your Honor, the timing of the destruction
13 alone creates an inference of bad faith. This is Richter, not
14 us. It follows the FBI raid, all of the grand jury subpoenas,
15 it follows the litigation hold, and it is on the very day
16 Richter was going to take possession of Mr. Fenske's computer,
17 and on that day, according to the deletion log, Mr. Fenske
18 deleted them.

19 Now, your Honor -- go ahead, your Honor.

20 THE COURT: Just a couple of questions.

21 First of all, do your witnesses, and I don't know if
22 you're in a position to say it now, but do your witnesses tell
23 you that it was part of the practice of Mr. Nygard and others
24 to put pictures of these pamper parties on the corporate
25 computers, corporate servers?

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1 MR. GUTZLER: The answer is absolutely, unequivocally
2 yes, from multiple independent sources. Everything about this
3 was done through the company, with the company resources,
4 company employees, company servers. In fact, if you look at
5 the Nygard corporate website, you will see pictures of pamper
6 parties, but they took some of those down.

7 THE COURT: Thank you. Here is my second question.

8 As I understand it, and I guess you and defense
9 counsel will correct me if I am wrong, all of the equipment,
10 all of the servers and the backup tapes that would give you the
11 information that you want is not only currently under the
12 possession of the Richter Group, but also, they are currently
13 actively pursuing that investigation. Now, I grant you that
14 the timing of all of this, as you have described it, is very
15 suggestive of potential wrongdoing, but it's being
16 investigated. Am I wrong about that?

17 MR. GUTZLER: Your Honor, I believe you're correct
18 about that. Richter, a Canadian receiver, with a different
19 agenda is, your Honor. So the answer to your question is yes.
20 And if I may, I would submit to you -- of course stating the
21 obvious but I do want to say it -- Richter, a Canadian
22 receiver, has a different agenda, different jurisdiction, a
23 different power and different priorities than an American
24 court, you, your Honor, that is presiding over this important
25 case. For example, does Richter care about photos at Falcon

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1 Lake? No. Do we? Absolutely. Do we care about videos that
2 we understand were being kept on the corporate servers showing
3 abuse? Yes, we want them. Richter doesn't care. Richter is
4 just looking to chase the apple. We are looking to show not
5 just that, but the wrongdoing. So, your Honor, the answer to
6 your question is yes.

7 THE COURT: Even if he had a different agenda, and I
8 don't purport to understand completely what it is that Richter
9 is doing or why, but if he is going to conduct an
10 investigation, he is going to -- and I don't know that Richter
11 is also an individual. I know it only as the Richter Group.

12 MR. GUTZLER: It's a company.

13 THE COURT: If that company is doing an investigation,
14 regardless of whether they care, they are going to indicate
15 that this is what they investigated, this is what they found,
16 these are the documents that were deleted, etc. Am I wrong
17 about that?

18 MR. GUTZLER: I don't think you're wrong about that,
19 your Honor. I think it's very possible, though, they may note
20 different documents and ignore different documents that were
21 destroyed that are of critical relevance here, for example,
22 servers. Richter Group is a receiver. They are basically
23 coming in to try to liquidate the company and get assets for
24 creditors. What we are talking about is a sex trafficking
25 ring. So we are talking about evidence of violations of the

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1 sex trafficking statute, evidence of particular people that
2 were at pamper parties. The Richter Group has no concern
3 whatsoever about that.

4 THE COURT: So let's assume that that's true, that the
5 Richter Group has no concern whatsoever about those particular
6 documents that are alleged to have been deleted. Is all of
7 that evidence, all of that forensic evidence safe for now?
8 That's the first part of the question. The second part of that
9 question is, where is that forensic evidence?

10 MR. GUTZLER: Let me answer the second one. I have no
11 idea. That's part of the reason we are here today, your Honor.
12 With respect to it being preserved, I don't know what Richter
13 is or is not going to do. I do understand that they are
14 looking into what was deleted for purposes of their task, which
15 is as a receiver. I have no idea what else has been destroyed.
16 I have no idea if the forensic data will be properly preserved,
17 but we would like to have somebody go in to find out what was
18 done and why, for our lawsuit, to protect our plaintiffs in
19 this case.

20 THE COURT: Was the Richter Group appointed by a
21 Canadian court?

22 MR. GUTZLER: I believe so, your Honor, yes.

23 THE COURT: Shouldn't my working assumption be that
24 they are a highly skilled and experienced computer forensic
25 group that uses best practices and conducts investigations in a

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1 manner that does not destroy the underlying evidence?

2 MR. GUTZLER: Good question. I don't know about their
3 forensic abilities, but I think we should presume they are very
4 good as a receiver. I don't know about the forensic piece,
5 your Honor. I believe that's a very niche specialty, something
6 I don't know about. But we would like to have for our lawsuit
7 access to that so we have it. I don't know if Richter will
8 publish it. I can't force Richter to give me any information.
9 I have no idea what Richter will care about, what files they
10 will go into. Do they care about certain servers that we care
11 about? I would submit to you, respectfully, your Honor, the
12 answer is no. So it's not an overlapping agenda nor
13 responsibility, and our lawsuit takes precedence with our
14 plaintiffs, and that's why I am here today with your Honor.

15 THE COURT: Assume arguendo, and I don't know the
16 answer to any of this, but that the Richter Group has
17 possession of all of this material, and has possession of it in
18 Canada, and it is currently under the auspices of a Canadian
19 court. How can I get that stuff for you if that's the case?

20 MR. GUTZLER: Well, I think I am asking for something
21 slightly different. I am asking for a couple of things, if I
22 may, to answer your question.

23 THE COURT: Sure.

24 MR. GUTZLER: Thank you, your Honor.

25 What we would ask for is discovery, your Honor, into

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1 what happened. We would like a deposition. We would like to
2 understand why it happened, what was destroyed, and most
3 critically, your Honor, we would like for a forensic IT person
4 to be able to access the systems to see what happened.
5 Because, your Honor, I guess you're right that I have no doubt
6 that Richter is good at bankruptcy stuff, for lack of a better
7 way of putting it, but I would much rather have an IT forensic
8 expert to protect the integrity of this case. My clients' case
9 is too important and I have to make sure that we take every
10 effort to be diligent and prudent and thorough, and my clients
11 deserve that, and we do want an IT forensic expert to go in
12 there to make certain that, one, Richter is not doing something
13 totally different than we are doing, and they don't have
14 different priorities, which I think they do.

15 So that is all for preserving the evidence in this
16 case and finding out why were thousands of documents destroyed
17 on company servers after a litigation hold. And that's what we
18 want to ascertain, your Honor, and make sure it doesn't happen
19 again.

20 THE COURT: Thank you. Let's do the two issues one at
21 a time.

22 Let me turn now to defense counsel on the issue of
23 spoliation.

24 MR. HARWOOD: This is Chris Harwood for Mr. Nygard.

25 Let me start and explain the issue a little bit.

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1 Plaintiffs are asking for extraordinary relief here, and at
2 this point they have not given this Court reason to believe
3 that any destruction of evidence occurred, much less that Mr.
4 Nygard, our client, was responsible for any such conduct.

5 THE COURT: What about the Richter report?

6 MR. HARWOOD: The Richter report does not assert that
7 improper evidence destruction occurred. The receiver report,
8 what it does is it identifies file deletions that opposing
9 counsel noted apparently occurred after the litigation hold was
10 issued. But the Richter report makes clear that the receiver
11 has not concluded that the deletions were improper. In fact,
12 the report expressly states that the receiver, quote, continues
13 to review the deletion logs to determine the appropriateness of
14 the data document deletions.

15 So the Richter report does not reach any conclusion
16 that there was any improper conduct; it identifies that
17 deletions occurred and so it's looking into the issue.

18 THE COURT: You are saying that plaintiffs have
19 provided no basis, but there is some basis because the Richter
20 report has determined that files were deleted after a
21 litigation hold.

22 MR. HARWOOD: Yes, your Honor. Although I guess the
23 question is, was there improper conduct here? Did somebody sit
24 down and intend to delete information relevant to the
25 allegations in this case? And while deletions may have

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1 occurred, there's no evidence that suggests that there was some
2 improper effort to destroy evidence here. Plaintiffs are
3 focused on the one employee, Greg Fenske, which the report
4 identifies too and identifies his account as having a number of
5 deletions. But again, the report, as with the general
6 deletions, doesn't make any finding that he improperly deleted
7 documents or was instructed to do so. Again, the receiver
8 makes clear it's looking into the issues.

9 We took this and plaintiffs' other allegation
10 seriously, and we spoke to Mr. Fenske, and based on our
11 discussions we don't have any reason to believe that he sought
12 to destroy relevant evidence, that he was instructed to destroy
13 relevant evidence, or even at this point that he did so
14 inadvertently. He denied any of that. As we noted in our
15 supplemental submission, to the extent that he deleted
16 documents, he reported that such deletions would have been
17 limited to his personal documents and to company documents that
18 he understood were not covered by the hold notice and were
19 unnecessary to retain for business reasons and were deleted to
20 preserve server space. And the Richter report notes that IT
21 personnel, that there was a practice of deleting data in order
22 to preserve server space. Servers are finite and if there was
23 no reason to keep the information, the information wasn't kept.

24 But equally important, based on our discussions with
25 Mr. Fenske, he understood that to the extent that he deleted

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1 documents, they were recoverable from two sources, from backup
2 tapes, and he understood also the same software application
3 that we understand is what the Richter Group used to compile
4 their deletion log, that that application also allowed for
5 information to be retrieved. So certainly that was, as
6 reported to us, his understanding. And as your Honor pointed
7 out, the receiver is in the process of both investigating the
8 deletions and also trying to work with the IT staff to recover
9 the documents.

10 As soon as we became aware and had access to the
11 deletion log that the receiver was referring to in the report,
12 we submitted it to your Honor. And reviewing that log, which
13 on its face reflects an assortment of seemingly unrelated file
14 names, doesn't support a claim that Mr. Fenske intentionally
15 took action to delete documents relevant to this case.
16 Consistent with what we understand from talking to him, the log
17 reflects deletion of a couple of different categories of
18 information. Web links, things like help desk links to
19 websites, there are many of those. There are documents that,
20 based on file names, are personal in nature, like medical leave
21 information. And then there are some documents that are
22 corporate documents that on their face from the file names
23 don't have any apparent connection to the callings in this
24 case. Just the first two entries on the first page: A standby
25 invoice in February 2010; the second entry, Nygard Enterprises

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1 LLC, main registration Florida.

2 Based on the receiver report, based on the information
3 that we gathered in our investigation to date, and based on the
4 very log that the receiver report references, there is just not
5 a sufficient basis to conclude that improper conduct occurred
6 with the intention of deleting documents.

7 THE COURT: Mr. Harwood, if I were to make that
8 determination, it would be based on my just taking your word
9 for it. Am I taking your word that you believe Mr. Fenske, or
10 whatever his name is? I am not prepared to do any of that
11 today.

12 My question to you is, why should we be going down
13 this road if the documents are in the possession of the Richter
14 Group, are presumably safe, so to speak, or being preserved
15 properly? And unlike Mr. Gutzler, I am very familiar with
16 these types of firms. If they don't themselves have the
17 forensic capacity, then they hire a very good computer forensic
18 firm. There are literally dozens of such firms that could have
19 been doing good work over the last 20 years at least. So I am
20 not so concerned about the integrity of the underlying
21 material.

22 So can you tell me where that material is, where the
23 Richter Group is with respect to its analysis, and what if
24 anything can we expect from that group with respect to its
25 investigation of those purportedly destroyed documents?

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1 MR. HARWOOD: Your Honor, our understanding is similar
2 to yours, though we representing Mr. Nygard don't have access
3 to the servers and documents anymore. Those were all taken
4 into possession by the Richter Group. So our understanding is
5 as yours, it is consistent with yours, that the Richter Group
6 has possession of the relevant servers, the relevant documents,
7 and has the means and the ability to do what in its report it
8 says it is doing, which is investigating the issue and working
9 to retrieve any files that may have been deleted.

10 So I am not in a position to describe to you exactly
11 what the Richter Group has done beyond what is stated in its
12 report, but I have no reason to doubt that the report is
13 accurate when it says that the Richter Group has the materials
14 and that it's working to determine whether anything improper
15 occurred and to retrieve any files that may have been deleted.

16 THE COURT: Could you tell me at least where those
17 materials are and whether they are under the jurisdiction of a
18 Canadian court?

19 MR. HARWOOD: My understanding is those materials are
20 all in Canada, but they were materials that were within the
21 possession, custody and control of the entities that were
22 placed into receivership. Those entities were in Canada. Some
23 of the entities were in the U.S., some were in Canada. My
24 understanding is that the relevant servers that we are talking
25 about here were in Canada and that the Richter Group has

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1 possession of them in Canada. And as your Honor noted, there
2 is a Canadian court that is overseeing the receivership that
3 that report was directed to.

4 THE COURT: Please forgive my ignorance. Why is that
5 pending in Canada?

6 MR. HARWOOD: The Nygard entities were headquartered
7 in Canada, so the receivership occurred in Canada.

8 THE COURT: And the principal place of business is
9 here in New York?

10 MR. HARWOOD: There is a dispute about that issue,
11 your Honor. That is going to be an issue for the motion to
12 dismiss briefing with respect to personal jurisdiction
13 arguments.

14 THE COURT: OK.

15 MR. HARWOOD: We have a difference of view.
16 Plaintiffs believe that the principal place of business is in
17 New York, and we have a very different view on that topic.

18 THE COURT: Go ahead, unless you're done.

19 MR. HARWOOD: Your Honor, I was finished with the
20 Richter piece, but there were significant allegations made and
21 so I just wanted to give your Honor a little bit of background
22 on the other pieces.

23 The allegations here -- also, I noted you said you are
24 not prepared to rule based on what we say we heard from
25 witnesses, but we certainly have taken the allegations

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1 seriously and followed up appropriately with respect to them.

2 Separate and apart from the receiver's report, the
3 plaintiffs have made a number of assertions relating to alleged
4 document destruction, and as we noted in our letter submission,
5 those allegations have been a moving target. They were
6 initially made and then walked away from allegations that Mr.
7 Nygard himself ordered the destruction of servers and that
8 employees were instructed to destroy evidence by destroying
9 hard drives and destroying computer servers.

10 They made those allegations initially. You saw that
11 in the February letters they submitted to you and to us. But
12 then they replaced those initial allegations with a very
13 different assertion which does not support their claim of
14 document destruction. They now assert that two specific
15 individuals on behalf of Mr. Nygard instructed IT personnel to
16 clean up a corporate website and Google references. But that
17 assertion, the alleged removal of photos and videos from a
18 public-facing website, doesn't equate to the destruction of
19 those photos or videos. And like with plaintiffs' allegations
20 relating to Mr. Fenske and the Richter report, we took that
21 allegation seriously. We spoke to the two individuals that
22 were identified, and certainly to us they denied destroying
23 documents, instructing others to destroy documents or being
24 instructed to destroy documents.

25 Of course, the allegation is not that documents were

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1 destroyed; it is that information was removed from a
2 public-facing website. And of course information can be
3 removed from a public-facing website without being destroyed.
4 Besides that, the only other support for their allegation of
5 document destruction is the receiver report, and as I already
6 mentioned, the receiver report doesn't actually make any
7 conclusions regarding document destruction.

8 So given the lack of support for their allegations in
9 document destruction, as your Honor notes, the receiver's
10 ongoing review of the purported deletions and the receiver's
11 ongoing effort to recover the deleted documents, and the lack
12 of any apparent link between our client and any preservation
13 issues, we respectfully submit there is no reason at this point
14 to pursue the extraordinary remedy of discovery that's being
15 sought, even before we have had a chance to respond to the
16 complaint. We don't see any evidence of spoliation.
17 Plaintiffs certainly haven't given the Court a reason to
18 believe that there was intentional destruction of information,
19 but the receiver has possession and plaintiffs can explore that
20 issue during discovery if this case gets to that point. There
21 is nothing time-sensitive about the issue.

22 THE COURT: Is there any party in the receivership
23 that is a defendant here that you represent?

24 MR. HARWOOD: We do not represent any of the receiver
25 defendants, no. We represent Mr. Nygard and one Bahamian

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1 entity that is not in the receivership.

2 THE COURT: I ask because I am wondering if there is a
3 way of getting some additional information, at least with
4 respect to a procedural posture, as to where the Richter Group
5 is and what it intends to do and what the timeline is.

6 MR. HARWOOD: We certainly have been at various points
7 in touch with counsel for the receiver. I can inquire as to
8 that, your Honor.

9 THE COURT: That would be helpful to me.

10 MR. GUTZLER: Your Honor, may I briefly respond?

11 THE COURT: Absolutely, Mr. Gutzler.

12 MR. GUTZLER: I know it's improper asking opposing
13 counsel questions, but I am a little confused as to who they
14 represent. Mr. Harwood, your Honor, I thought that they
15 represented all of the defendants, and I thought that all of
16 the defendants are in receivership, except for Mr. Nygard
17 individually. I was a little confused by that answer and I
18 think your Honor was asking for a reason. Did I misunderstand
19 something?

20 MR. HARWOOD: The answer I gave was accurate.
21 Initially we represented all of the defendants and then a
22 number of the defendants were placed in receivership. The case
23 has been stayed as to those entities and a receiver is in
24 control of those entities.

25 THE COURT: OK. If you could inquire, that would be

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1 useful.

2 Anything else that you wanted to respond on that
3 point, Mr. Gutzler?

4 MR. GUTZLER: Thank you for the clarification, Mr.
5 Harwood.

6 Very briefly, I wanted to talk about Greg Fenske and
7 the alleged denial. Your Honor, as I told you at the outset, I
8 said it for a reason, we have had many, many people come to us.
9 And some of the people who have come to us have a direct
10 pipeline into what is going on. And notably, there was no
11 affidavit from Mr. Fenske; he didn't put together an affidavit.
12 And I submit to you he won't put together an affidavit. But I
13 would like to take his deposition because we have information
14 from multiple sources that his denial -- he denied it in the
15 Richter report -- is a joke. I have no idea how he could
16 possibly deny it. So our information is better than opposing
17 counsel's. We have people that very much care about this case
18 having the truth be revealed. So I would like to see an
19 affidavit from Mr. Fenske where he submits to the jurisdiction
20 of this Court, and I anticipate we will never receive one of
21 those.

22 I also wanted to respond to the note that Mr. Harwood
23 said that the documents that were deleted were ones that
24 couldn't possibly be relevant. And I think I did note quite a
25 few entries, and I can't imagine how photos of Falcon Lake are

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1 not relevant.

2 Your Honor, I want to anonymously introduce somebody.
3 I have a couple of my clients listening silently anonymously.
4 Your Honor, one of them has been to Falcon Lake in 2018, and
5 she is a survivor and she is listening right now. I am not
6 going to say anything else, but she is one of the people who is
7 going to be an additional Jane Doe. So Falcon Lake photos from
8 2018 would be terribly important, as well as the \$28 million in
9 U.S. cash that was pulled down.

10 The last thing, your Honor, is where is the evidence?
11 At the outset, what we want is the evidence. We don't want to
12 have an adverse inference; we want the documents, because we
13 know what they are going to show. So we would rather show a
14 jury the actual evidence, the photos from Falcon Lake, for
15 example, rather than saying, you should presume it's an adverse
16 document for the other side.

17 THE COURT: Let me ask about these pictures. These
18 pictures are of a party at Falcon Lake, you say.

19 MR. GUTZLER: All I know is the subject line is:
20 Photo, June 18 through June 28, 2018, Falcon Lake PDF. That's
21 all I know.

22 THE COURT: Is the allegation that at these parties
23 there was a lot of inappropriate sexual misconduct and sexual
24 assaults taking place?

25 MR. GUTZLER: Yes. That is one of the core

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1 allegations that we have heard from dozens of witnesses,
2 including the Jane Doe on this phone call. We have all kinds
3 of evidence, your Honor. We have pamper parties -- it's a
4 ridiculous name, but that's what they are called -- and that is
5 where drinking and drugging would go on and sexual assaults.
6 And that is all throughout our complaint, your Honor.

7 THE COURT: Is it the allegation that there were
8 pictures of these parties on the public-facing part of the
9 company's website?

10 MR. GUTZLER: That is true also. We also understood
11 other photos were stored privately on computer servers. Again,
12 I don't know what I don't know, but if you were to look at the
13 Nygard corporate website in our complaint, we have cited to
14 dozens of links where it was Peter Nygard with young women in
15 bathing suits and drinking at a pamper party. It is on the
16 corporate website. Most of them have now been removed; some of
17 them have been removed, not all, but they also had stuff that
18 was stored privately. Obviously, your Honor, I don't know what
19 that 2018 photo was, but that's a really curious one, as well
20 as the 28 million being taken out. So I don't know what I
21 don't know, but we should have access to the evidence.

22 MR. HARWOOD: Your Honor, can I respond?

23 THE COURT: Sure.

24 MR. HARWOOD: So as Mr. Gutzler said, he doesn't know
25 what he doesn't know. He is looking to put the cart before the

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1 horse here. He says he receives information about what Fenske
2 did that is better than our information and somehow that
3 entitles him to take discovery when we are still at a point
4 where plaintiffs haven't even responded to the complaint.

5 As your Honor noted, this information, what happened
6 in terms of these deletions, at this point we don't have any
7 reason to believe that there was intentional misconduct, but it
8 is something that is, as we understand it, being sorted out by
9 the receiver and there is no reason why that process can't
10 continue. I volunteered and will inquire as to a timeline of
11 what the receiver is doing. But at this point plaintiffs are
12 suggesting there should be extraordinary relief, pre-motion to
13 dismiss, pre-answer discovery, because they are speculating
14 that something improper occurred, but don't actually know
15 whether anything improper occurred. For the same reasons that
16 they didn't want us to have the names of their clients until
17 discovery actually starts, this issue can also wait until
18 discovery actually starts.

19 THE COURT: Mr. Gutzler, you had another point?

20 MR. GUTZLER: Yes, very briefly. To that point, it is
21 strange to be saying that we put the cart before the horse. We
22 were correct in every single thing we brought to opposing
23 counsel's attention. It wasn't a moving target. It was three
24 buckets of information, and we were right on all three. They
25 did clean up corporate websites and other files; they did try

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1 to change the Google indexing; and they did destroy thousands
2 of documents.

3 In my 23 years of practice, Judge, I have never seen
4 documents being destroyed like this, by a person who is named
5 as a key co-conspirator, after a litigation hold, after an FBI
6 raid, and the day Richter was going to take over the computers.
7 I have never seen it, and I have never seen a more clear
8 example of a situation that merits looking into. And, no, I
9 don't take Mr. Fenske's word for it because I have information
10 that is different, but I know he deleted thousands of
11 documents. That's the difference here. I am not speculating
12 whether he destroyed documents. He did. And I have never seen
13 a case quite like this, your Honor. So I would respectfully
14 submit that measured, tailored discovery to ascertain the truth
15 is prudent and it's warranted and it's fair.

16 THE COURT: Thank you.

17 Here is where I come down on the issue of spoliation.
18 Unless and until someone tells me different, so far as I know,
19 all of the evidence that would prove or not that relevant
20 documents were deleted is safely in the possession of the
21 Richter Group, under the jurisdiction of the Canadian court.
22 Just like I will not take Mr. Harwood and Mr. Fenske at their
23 word at this point because I have nothing to base it on, nor
24 will I take you, Mr. Gutzler, or your witnesses, at your word
25 that these documents not only were deleted but were deleted

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1 with an ill purpose.

2 Now, the facts, and I have acknowledged that the facts
3 are before me, are suggestive perhaps of wrongdoing, the facts
4 that there were deletions that were made after the litigation
5 hold on the same day or the day prior to the time that the
6 Richter Group was going to take control of the servers and the
7 backup tapes. But now the Richter Group has control of the
8 servers and the backup tapes and, accordingly, I don't see why
9 there is any need to proceed any further at this point. You
10 will have your evidence at the appropriate time, presumably
11 since, again, no one is able to tell me whether I even have the
12 authority to direct the Richter Group to give you those
13 materials.

14 So that aspect of your request is denied. Let's talk
15 about the amended complaint.

16 Let me begin by asking you, Mr. Gutzler, again, we
17 were here a couple of weeks ago and it is my practice to ask
18 the parties, now that you have been apprised of the other
19 side's challenges, do you see a way of amending the complaint
20 in order to meet those challenges so as to avoid lengthy and
21 expensive motion practice? In their papers, Morvillo
22 Abramowitz suggests that you had that opportunity, that you
23 knew about this before, and that you determined that the
24 complaint is good enough as it is. So what has changed? What
25 is new?

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1 MR. GUTZLER: Yes. Thank you, your Honor. Thank you
2 for hearing us on the evidence issue. The answer is very
3 simple, and one of those people is on the phone listening
4 silently. That is that we have had ten new plaintiffs come to
5 us who would like their voices to be heard and for justice for
6 them. They have come forward after months of agonizing on what
7 to do. And I am not going to have her speak, but I spoke to
8 her, and I know what these people are going through.

9 So we have additional plaintiffs, your Honor. And
10 that's particularly important here, because as we talked during
11 the last hearing, counsel made a very big point about the class
12 certification issue, the class won't be certified. In that
13 event, your Honor, I want to make sure that the survivors who
14 have come forward do have a platform, an opportunity, and we
15 want to add them to the amended complaint. It will not slow
16 down at all the briefing. The same arguments they can make.

17 So the reason for the amendment, your Honor, since the
18 last time we spoke is, one, new plaintiffs have come forward,
19 and I want to honor their wishes to be represented. And two,
20 counsel talked about certain factual gaps that prevented them
21 from even filing certain motions to dismiss. For example, I
22 believe it was the date of the assault of Jane Doe No. 10, when
23 Mr. Harwood said, how can I possibly tell know it's within the
24 statute of limitations? So we are going to add the date. So
25 it's factual gaps. Defense counsel said they may be filing a

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1 motion for a more definite statement to address those issues.
2 So, your Honor, we are happy to fill in a couple of alleged
3 factual gaps that counsel raised during our last phone call.
4 It won't change their legal bases. It won't slow anything
5 down. It will just have additional facts that they wanted for
6 the motion to dismiss, and, your Honor, for us to add
7 approximately ten more plaintiffs who have come forward to us.
8 And that's as simple as it is, your Honor. We can do that
9 amendment very, very quickly. It will not be much. It is just
10 adding plaintiffs and a few small factual gaps that defendants
11 wanted addressed for the motion to dismiss.

12 THE COURT: Mr. Harwood, when is the opening brief due
13 on the motion to dismiss?

14 MR. HARWOOD: With this current premotion, things have
15 gotten a little sidetracked, but it was supposed to be due on
16 Monday.

17 THE COURT: OK. And your argument on the proposed
18 amended complaint?

19 MR. HARWOOD: Yes, your Honor. Thank you.

20 The plaintiffs really haven't given the Court a valid
21 justification for the amendments. With respect to our needs,
22 we don't need plaintiffs to clarify or correct factual gaps for
23 our motion to dismiss. We are prepared to move forward with
24 the complaint as is. Most importantly, the plaintiffs'
25 proposed amendments aren't aimed at any of the defects that are

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1 going to be the subject of our motion to dismiss. They
2 certainly, in their papers or today, they have not identified
3 any defect that the proposed amendments would cure. To the
4 contrary, they acknowledged in their premotion letter that
5 their new pleading won't address the legal grounds upon which
6 our anticipated motion will be based.

7 Of course, the current complaint is an amended
8 complaint. There was an initial complaint back in February and
9 we identified the same legal defects in our premotion letter
10 response to the initial complaint. They sought 45 days to
11 amend, but they didn't address the defects then, including
12 anything relating to the class definition, and so there is no
13 reason to believe that they are going to address the defects
14 now. In fact, the type of alleged conduct on which their
15 claims are based is not susceptible to class treatment because
16 to determine whether any of the putative class members is a
17 member of the class would require separate adjudication as to
18 whether that specific class member was a victim of a unique
19 instance of sexual misconduct. The cases we cited in our
20 papers show that that's a material defect.

21 Separately, Mr. Gutzler mentioned adding new
22 plaintiffs, but there is no justification at this point for
23 adding new plaintiffs either. The plaintiffs are pursuing this
24 as a class action. We don't believe it is appropriate as a
25 class action, but they believe it is, and they have already got

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1 46 plaintiffs asserting claims on behalf of their putative
2 classes, and they haven't suggested that any of these new
3 plaintiffs are going to add anything with respect to their
4 particular characteristics that will make them any more likely
5 to survive on any grounds for dismissal, i.e., that none of the
6 alleged conduct occurred in New York, that it's outside of the
7 statute of limitations period. So for those reasons, we don't
8 believe that they have provided valid grounds for amending the
9 complaint.

10 MR. GUTZLER: Your Honor, may I respond?

11 THE COURT: You have got a minute or two.

12 MR. GUTZLER: The actual plaintiff who is on the phone
13 right now listening silently, who wants to be a new Jane Doe,
14 was in the last three years and she was raped in New York. So
15 that addresses that issue. And she wants to be heard. She
16 deserves that.

17 Second of all, on the class certification issue, we
18 did tell counsel we would seek to revise the class definition.
19 And so in the alternative, your Honor, to the extent that the
20 Court does agree with the defense, with respect to our revised
21 class definition in the second amended complaint, we would seek
22 to have our additional Jane Does added to the complaint,
23 including the survivor who is on the phone right now. So we
24 feel it's very important. I don't see the prejudice to
25 defendants. They can make their same arguments, but we do have

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1 our plaintiffs who have their shot at justice, and that's what
2 we want.

3 THE COURT: Thank you.

4 On the amended complaint issue, again, the motion to
5 dismiss has not yet been filed, and defendants have indicated
6 on any number of occasions, first of all, that they would
7 initially move for a more definite statement and there are
8 still parts of the complaint that they felt were deficient with
9 respect to the level of specificity that was provided or the
10 amount of facts that were provided.

11 Certainly, it is the case that plaintiffs are coming
12 here at least two weeks too late, or three weeks too late, in
13 terms of offering to fill in those gaps now, but I don't see
14 how defendants are prejudiced, because once we get into the
15 cross-motions to dismiss, to amend things get very, very
16 sloppy. So to keep things as efficient as possible and moving
17 as neatly as possible, I will grant plaintiffs leave to file an
18 amended complaint. They should do so by next Wednesday, which
19 is the 10th of June. Defendants will thereafter have three
20 weeks to file their motion to dismiss, three weeks to respond,
21 and one week to reply.

22 So the motion will be due on the 1st of July; the 22nd
23 of July will be the response; and the 29th of July will be the
24 reply.

25 MR. GUTZLER: Thank you, your Honor.

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1 THE COURT: Does everyone have those dates?

2 MR. HARWOOD: Yes, your Honor.

3 Can I raise just one issue?

4 THE COURT: Absolutely.

5 MR. HARWOOD: Just to clarify, given that Mr. Gutzler
6 provided justification for the new plaintiffs and somebody
7 alleging conduct within the limitations period in New York, I
8 would respectfully submit, to the extent they are adding new
9 plaintiffs, that should be limited to conduct that occurred
10 within the last ten years and in New York.

11 THE COURT: Well, presumably, whatever they are going
12 to add, it will be arguably within the statute.

13 MR. GUTZLER: The relevant statute, that's correct.
14 We can bring in any plaintiffs we want. We do have different
15 plaintiffs from different time periods.

16 THE COURT: File your amended complaint.

17 Anything else?

18 MR. GUTZLER: No. Thank you very much. We appreciate
19 you listening to us today.

20 THE COURT: Anything else, Mr. Harwood?

21 MR. HARWOOD: Just procedural. We didn't address at
22 the last meeting the page limits for the brief. This motion to
23 amend preempted that. But given that we are now back on
24 schedule, having evaluated the claims and the arguments, as
25 well as the complaint now has 46 plaintiffs and it's probably

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1 going to increase, it's now 250 pages, and there are multiple
2 different grounds for dismissal, each requiring separate
3 explanations, I would respectfully request that we be entitled
4 to 50 pages for our motion to dismiss.

5 THE COURT: That application is granted.

6 MR. HARWOOD: Thank you, your Honor.

7 THE COURT: Unless there is anything else, we are
8 adjourned. Everyone please stay safe.

9 MR. GUTZLER: Thank you, your Honor.

10 MR. HARWOOD: Thank you, your Honor.

11 (Adjourned)
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